Supreme Court, U.S.
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In The
Supreme Court of the United States

MARY HALLMAN, Next Friend with General Power of Attorney for Charles Clifton Walters
Petitioner

V

HAROLD RAY PRESLEY
SHERIFF OF LEE COUNTY, et al

HAROLD RAY PRESLEY
SHERIFF OF LEE COUNTY, et al

JOHN YOUNG
DISTRICT ATTORNEY, et al

Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

MARY HALLMAN
Next Friend with General Power of Attorney
For Charles Clifton Walters
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662-844-0014
In Propria Persona

66pp

QUESTIONS PRESENTED

Does a next friend with General Power of Attorney have standing to bring a 42 USC 1983 action on behalf of the principle ?

Can a Federal Court grant immunity (absolute, judicial or qualified) to state actors where the state legislature has enacted legislation making them liable ?

Does the failure to hear Petition for Writ of Habeas Corpus state a claim upon which relief may be granted under 42 USC 1983 ?

PARTIES TO PROCEEDING

The plaintiff and defendants, et al to this proceeding are named in the caption and in Appendix 30, 31, 32, 33, 40, 41, 42, 43.

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1) Federal District Court for the Northern District of Mississippi - filed 4 Oct 2000

2) Federal District Court for the Northern District of Mississippi-Rehear Denied – filed 19 Oct 2000

3) 5th Circuit Court of Appeals

Non-published- No precedence - filed 18 Jul 2001

4) 5th Circuit Court of Appeals

Rehear Denied – filed 25 Sep 2001

JURISDICTION

Petitioners 42 USC 1983 claims were dismissed pursuant FRCP 12 (b) 6 by the Federal District Court on 4 Oct 2000. Petition for Rehear was denied on 19 Oct 99. On appeal, the 5th Circuit Court of Appeals affirmed the District Courts dismissal on 18 Jul 2001.

Petition for Rehear was denied on 25 Sep 2001.

The jurisdiction of this Court is invoked pursuant to United States Constitution Art III Section 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutions

United States Constitution Article I, Section 9

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United States Constitution Article III, Section 2

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Mississippi Constitution Art 3 Sect 21 Page 5 -9

Statutes

28 USC 2072 Page 9

42 USC 1983 Page iv, 1 & 13

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PETITION FOR WRIT OF CERTIORARI

Charles Clifton Walters prays that a Writ of Certiorari issue to review the actions of the Fifth Circuit Court of Appeals and United States District Court for the Northern District of Mississippi whose judgments and actions in dismissing Petitioners 42 USC 1983 claims departed greatly from established judicial precedent and afford Charles Clifton Walters Petitioner no post deprivation relief.

STATEMENT OF THE CASE

This case involves the denial of Charles Clifton Walters Constitutional Rights where no post deprivation relief lies. (Hellenic American Neighborhood Action Committee v City of New York citing Hudson v Palmers 468 US 531 and Logan v Zimmerman Brush Company, 455 US 422).

Charles Clifton Walters, a male Caucasian with approximately a 6th grade education, was arrested, illegally indicted and incarcerated in the Lee County Mississippi jail for over two years, through the use of fraud and fabricated evidence for the murders of Pamela Reed and Brandon Gliatta, of which he was found NOT GUILTY March 3, 2001. Mary Hallman, next friend with General Power of Attorney sought the release of Charles Walters and the prosecution of the known murderer by seeking the assistance of the defendants in these three consolidated cases. During this quest, Hallman proved to law enforcement officials and state prosecutors that Walters was being unlawfully held, was fraudulently indicted, and was being denied the needed medical care for his heart condition while incarcerated. Tape-recorded

conversations with law enforcement officials and conversations with the District Attorney and Assistants revealed they knew Walters was not the murderer but were going to prosecute him anyway. Lack of meaningful assistance from Court Appointed Counsel for Walters (Counsel met him four times for approx 15 minutes each trying to get him to plead guilty to lesser charges and void power of attorney to Hallman) lead Hallman to file Writ of Habeas Corpus as next friend of Walters with General Power of Attorney into the state court which was refused to be heard.

As a result of these actions, Mary Hallman as next friend with General Power of Attorney filed a 62-page suit in the Federal District Court for the Northern District of Mississippi (Case 1:00CV186-D-A) detailing Walters Constitutional rights

violations. Hallman as a member of the victims' family and other family members later filed a second 84-page suit into the Federal District Court for the Northern District of Mississippi (1:00CV193-D-A) and finally a third 13 page Writ of Habeas Corpus (again never heard) and request for Federal Assistance regarding prosecutorial misconduct of the state actors (1:00CV197-D-A).

The Federal District Court, without motion, consolidated these cases and stayed all discovery.

The Federal District Court later dismissed the consolidated cases pursuant to FRCP 12 b (6) also claiming Hallman had no standing to bring these actions. Petition to Reconsider and Set Aside Order was denied, leading to an appeal to the Fifth Circuit Court of Appeals, which upheld the

District Courts ruling. Rehear before the Fifth Circuit Court of Appeals was also denied.

REASONS FOR GRANTING THE WRIT

The right of Writ of Habeas Corpus is firmly planted in both the United States Constitution (Article 1, Section 9), 28 USC 2242, FRCP 17, the Mississippi Constitution (Article 3 Section 21), and Mississippi Uniform Rules of Circuit and County Court 2.07. These gave Mary Hallman, as next friend with General Power of Attorney the standing to file Writ of Habeas Corpus on behalf of Walters.

Further Hallman entered into contract with Walters by and through General Power of Attorney, which could only be voided in writing by the person making it. The Courts can only

enforce a contract, not make one. (Hunt v Rusmanier 8 Wheat 174, Imperial Fire Ins Co v Coos County 151 US 452). As such, the Federal Courts erred in holding Hallman had no standing.

Notwithstanding the above, the Mississippi Legislature, by legislative statute, enacted MCA 11-43-15 which expressly makes judges not hearing Writ of Habeas both civilly and criminally liable.

In addition, the Mississippi legislature passed MCA 11-15-1, 11-46-5, 11-49-17 and 11-46-5 (2) which removes state employees (judges included) from acting within the course and scope of their duties if conduct constitutes fraud, malice, libel, slander, defamation or any criminal offense other than a traffic violation.

The Mississippi Supreme Court ruled that state

officials have no immunity to civil action if an injury is caused and (1) the duty is ministerial (2) involves discretion and the actor exceeds authority (3) actor commits an intentional tort. (Mohundro v Alcorn Co No 92-CA-00152-SCT). Under Mississippi law an act is ministerial if imposed by Law, (Grantham v Mississippi Dept of Corrections 522So 2d 219, 225 (Miss 1998), Davis v Little 362 So 2d 642, 644 (Miss 1978 quoted in Region VII Mental Health v Issac 523 So 2d 1013 (Miss 1998).

Although the private litigant may not be held to the same standard as an attorney (Haines v Kerner 404 US 519(1972), the Federal District Court and Fifth Circuit Court of Appeals would ask one to believe the consolidated 62, 84 and 13 page complaints detailing the constitutional rights

violations did not contain any grounds that relief could be granted. When a persons constitutional rights are violated the Federal District Court has jurisdiction and it cannot be dismissed, (Bell v Hood 678 (1946). All of the state actors claimed immunity defenses yet no discovery was allowed to see if they in fact met the burden.

Absolute immunity bear the burden it is justified, not the identity of the actor performing it (Forrester v White 489 US 219). Immunity may not be ordinarily resolved without engaging in discovery and eventual trial (Mireles v Waco 112 Sct 286 (1991). Prosecutors who discover and suppress evidence and witnesses do not enjoy absolute immunity (Houston v Partee 978 F2d 362 (7th Cir 1992) Barber v Smith 836 F 2d 96 (2d Cir 1987).

Qualified immunity applies to non-adjudicative cases but only if the act violates no statute or constitutional right (Harlow v Fitzgerald 457 US 800, 818 (1982). As such, the lower Federal Courts erred in automatically assuming immunity and not allowing discovery to see if in fact these persons qualified, said denial further violating Petitioners rights under 28 USC 2072, FRCP 26-37 and Conley v Gibson 355 US 41 and Federal District Court Local rule 26.1 (10).

Not being overly redundant, both the United States Constitution Article 1 Section 9, the Mississippi Constitution Article 3 Section 21 guarantee Charles Clifton Walters the constitutional right of Habeas Corpus to be heard. Here, both the state court and federal court refused to hear it.

There has been no constitutional convention changing either, nor has there been a rebellion or invasion during this case.

This very court has reviewed Writ of Habeas presented on a paper sack. As such this constitutional rights violation is clearly established and a claim upon which relief may be granted. The deprivation of a fundamental liberty/rights "for even minimal periods of time, unquestionably constitutes irreparable injury" Elrod v Burns 96 S.Ct 2673; 427 US 347 (1976).

CONCLUSION

Charles Clifton Walters was the victim of fraud, corruption and "conviction at any cost" attitude by the state actors. He is not highly educated and an allegedly easy target. His disability income did

not afford him more than a Court appointed attorney, said Court appointed attorneys being forced to defend Walters. Without the persistence and loyalty of Mary Hallman, his next friend with General Power of Attorney, Walters would have become another wrongfully convicted, executed human at the hands of an out of control judicial system in Mississippi. In total disregard to evidence, laws and the constitution, state actors, both in their individual and official capacities set out to convict an innocent man. In their efforts, they violated many constitutional rights, which are set in place to deter this type conduct. However the Courts in Mississippi, with the blessing of the Federal Courts appear to condone this conduct. If left unchecked, constitutional violations will continue in Mississippi.

These consolidated cases have merit and require this highest court of the land to help correct these acts and to give peace of mind to a man in his last years upon this earth.

The Courts have an affirmative duty to watch for violations of individuals' constitutional rights, especially from powerful entities such as the government, (Boyd v US 116 US 616). This Court has twice struck down the 5th Circuits "heightened pleading" rule and continuously followed the guidance of Conely v Gibson, 355 US 41, (Leatherman v Tarrant County NICU 507 US 163.

Additionally, the Courts should enforce the constitutional right of remedy for the intentional wrongs inflicted upon Charles Walters. The granting of this Writ and successful upholding of

this 42 USC 1983 action will not only provide the necessary stability of the lower Courts, but will protect other citizens from the abuse of power found in this case, thereby setting guidance which will reduce the loads placed on this Court. Further this case cannot legally be said to be frivolous as it states flagrant constitutional violations and not mistake.

Respectfully submitted without prejudice this the 20 day of December 2001.

Mary Hallman

MARY HALLMAN
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In Propria Persona

Appendix 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF
MISSISSIPPI
EASTERN DIVISION

MARY HALLMAN, Next Friend with
General Power of Attorney for
Charles Clifton Walters **PLAINTIFF**

v. **Civil Action No. 1:00cv186-D-A**

HAROLD RAY PRESLEY,
SHERIFF OF LEE COUNTY, ET AL
DEFENDANTS

Consolidated With

MARY HALLMAN, PATRICIA STANFORD,
MARY LOU PRESLEY, and
CHARLES T. PRESLEY, Jr. **PLAINTIFFS**

v. **Civil Action No. 1:00cv193-D-A**

HAROLD RAY PRESLEY,
SHERIFF OF LEE COUNTY, ET AL
DEFENDANTS

MARY HALLMAN, PATRICIA STANFORD,
MARY LOU PRESLEY, and
CHARLES T. PRESLEY, Jr. **PLAINTIFFS**

v. **Civil Action No. 1:00cv197-D-A**

Appendix 2

JOHN YOUNG, ET AL DEFENDANTS

TO BE FILED IN ALL CASES

OPINION

Before the court are the motions of the Defendants in each of the above-styled cases to dismiss the Plaintiffs' claims. Upon due consideration of the motions, the court finds that each is well-taken and that the consolidated cases should be dismissed.

Factual and Procedural History

Each of the above-captioned cases was filed by the Plaintiff Mary Hallman and is founded upon events stemming from the murders of Pamela Reed and her infant son Brandon Gliatta.

Reed and her infant son were brutally beaten to death on or about August 14, 1998. On August 19,

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1998, Defendants Lee County Sheriff Harold Ray Presley and Lee County Investigators Terry Jones, Steve Stanford, John Hall, and Jim Johnson arrested Charles Clifton Walters (Walters) and Anthony Gliatta (Gliatta), charging them with capital murder. Ultimately, Gliatta was released and an indictment against him was not pursued. As a result of Walters' arrest, Hallman, a relative of the decedents, filed the underlying cases contending, inter alia, that the Defendants have engaged in a vast conspiracy to violate Walters' constitutional rights. Specifically, Hallman asserts that Walters was arrested and is being held upon insufficient evidence, that the actual perpetrator, Anthony Gliatta, has been allowed to go free in order to obtain a fraudulent indictment against Walters that the Defendants have failed to provide

adequate medical care to Walters in violation of the Eighth Amendment, and that Walters has been denied his constitutional right to a speedy trial. Hallman also proffers a host of criminal charges against the Defendants with respect to their alleged fraudulent activity in prosecuting Walters. Other allegations specific to each case will be addressed below.

Discussion

In ruling on a motion to dismiss under Rule 12 (b) (6), the court must take as true the well-pleaded allegations in the complaint and construe them in the light most favorable to the plaintiff. C.C. Port, Ltd, v. Davis-Penn Mtg. C., 61 f.3D 288, 289 (5TH Cir. 1995). When a plaintiff appears pro se, courts are advised to construe the complaint liberally. Krempp v. Dobbs, 775, F.2d 1319, 1320 (5th Cir.

1985). "Taking the facts alleged in the complaint as true, if it appears certain that the plaintiff cannot prove any set of facts that would entitle it to the relief it seeks, " dismissal is proper. C.C. Port Ltd., 61 F.3d at 289. It must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Campbell v. City of San Antonio, 43 F.3d 973, 975 (5th Cir. 1995). Moreover, if a required element or prerequisite to obtaining relief is lacking in the complaint, dismissal is proper. C.C. Port, Ltd., 61 F.3d at 289.

A. Hallman v. Presley, et al., Civil Action No. 1:00cv186-D-A

In this, Hallman's first cause of action, she alleges numerous claims on behalf of Walters, including a plethora of constitutional violations

under the Eighth and Fourteenth Amendments, as well as allegations of criminal infractions against the Defendants. The Complaint, which seeks only monetary relief, includes a demand for approximately $84 million, plus treble damages for the actions of unknown and unnamed Defendants. Notable, Hallman filed the case as "Next Friend with General Power of Attorney for Charles Clifton Walters" and purports to operate on Walters' behalf pursuant to a valid power of attorney.

1. Hallman as Power of Attorney for Walters

Hallman purports to bring this action under an alleged "power of attorney," copies of which she has provided to the court. Assuming, strictly for the benefit of the Plaintiff, that the power of attorney is valid and enforceable, the court

nonetheless finds that the underlying Complaint resounds with baseless and conclusory allegations and should be dismissed.

Here, the thrust of the Plaintiff's Complaint is that the Defendants have unlawfully refused to indict and prosecute Glistta for the murders of Reed and Brandon Gliatta, and instead are wrongfully attempting to prosecute Walters for the murders.

Hallman contends that this state of affairs is the result of a vast conspiracy between these public officials to violate Walters' constitutional rights. The Plaintiff's Complaint purports to set forth claims against the Defendants predicated on violations of Walters' rights under the Eighth and Fourteenth Amendments. Upon review of the record before it, however, the court finds that the

Plaintiff's factual allegations reveal no viable basis for such claims. Nothing in the facts pleaded by the Plaintiff reveals a violation of his Eighth Amendment guarantees, nor does it suggests that the Defendants took any action against Walters based on some invidious, class-based discrimination. Accordingly, the court finds that the Defendants are entitled to dismissal pursuant to the provisions of Rule 12(b) (6) of the Federal Rules of Civil Procedures.

2. Hallman Lacks Standing in Her Own Right

Alternatively, it is altogether unclear whether Hallman is also attempting to bring the underlying claims in her own right. Thus, the court will address the issue of Hallman's standing to pursue these claims.

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The question of standing focuses on whether the litigant in entitled to have the court decide the merits of the dispute or of particular issues" Warth v. Seldin, 422 U.S. 490,498,95 S. Ct. 2197, 2205, 45 L. Ed. 2d 343(1975). To establish standing, Article III requires a plaintiff to demonstrate: 1) that he or she has suffered or imminently will suffer an actual injury; 2) that the injury is fairly traceable to the conduct or actions of the defendants; and 3) that a favorable federal court decision will effectively provide redress for the injury alleged. See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472, 102 S. Ct. 752, 758, 70 L. Ed. 2d 700 (1982). In addition, to these constitutional requirements, the Supreme Court has identified three prudential standing principles:

1) a party may assert only his or her own rights and cannot raise the rights of third parties not before the court 2) a plaintiff may not sue as a taxpayer who shares a grievance in common with all other taxpayers; and 3) a party must raise a claim within the zone of interests protected by the statue in question. See Ervin Chemerinsky, Federal Jurisdiction § 2.3.1 (2d ed. 1994).

Applying the above principles to the case at bar, the court concludes that Hallman lacks standing to bring the underlying claims. First, Hallman has not met the constitutional requirement of an injury in fact. To satisfy this requirement, a plaintiff must demonstrate that she is threatened by an injury that is both "real and immediate, not conjectural or hypothetical." City of Los Angeles v. Lyons, 461 U.S. 95, 101-02, 103 S.

Ct. 1660, 1665, 75 L. Ed. 2d 675 (9183).

Indeed, Hallman alleges no form of injury to herself and proffers no sufficiently concrete interest in the outcome of th(e) suit to make it a case or controversy subject to a federal court's Art(icle) III jurisdiction..." Sindleton v. Wulff, 428 U.S. 106, 112, 96 S. Ct. 2868, 2873, 49 L. Ed. 2d 826 (1976). Accordingly, Hallman's allegations do not satisfy the requirement that a plaintiff allege an actual or imminent injury in fact. See Lyons, 461 U.S. at 101-02, 103 S. Ct. at 1664-65.

Second, the court finds that Hallman's claims, which are based entirely on the rights of Walters, violate the prudential prohibition on third-party standing. See Warth, 422 U.S. at 499, 95 S. Ct. at 2205; Singleton, 428 U.S. at 114, 96 S. Ct. at 2874 (citing Barrows v. Jackson, 346U.S. 249, 255, 73

S. Ct. 1031, 1034, 97 L. Ed. 1586 (1953) (Court's general rule: "Ordinarily, one may not claim a standing in this Court to vindicate the constitutional rights of some third party.")).

Based on the foregoing principles, the court is of the opinion that this case should be dismissed pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedures and, alternatively, that Hallman, as an individual, lacks standing to assert the underlying claims. Accordingly, the Plaintiff's claims shall be dismissed with prejudice.

B. Hallman v. Presley, et al., Civil Action No. 1:00cv193-D-A

Hallman's second cause of action includes the following parties Plaintiff: Patricia Stanford, Mary Lou Presley, and Charles T. Presley, Jr. As with the above case, Hallman has asserted a host of

claims predicated on constitutional violations, as well as allegations that the Defendants are guilty of, inter alia, obstruction of justice, conspiracy to obstruct justice, and unlawfully refusing to indict Gliatta for the murders of Reed and Brandon Gliatta. Specifically, Plaintiffs aver that the Defendants have violated their Fourteenth Amendment rights to due process and equal protection of the laws. The principal difference between this cause and cause number 1:00cv186-D-A is the addition of the above-listed parties Plaintiff and certain other named Defendants. As with the prior case, the Plaintiff' Complaint request only monetary relief, herein and amount approximately equal to $144 million.

As noted above, the Plaintiffs' Complaint purports to set forth claims against the Defendants

predicated on violations of their rights to due process and equal protection of the law as guaranteed by the Fourteenth Amendment. Upon review of the record, however, the court determines that the Plaintiffs' factual allegations reveal no viable basis for such claims. Nothing in the facts pleaded by the Plaintiffs reveals a violation of their due process or equal protection rights, nor does it indicate that the Defendants took any action against them based on some invidious, class-based discrimination.

Accordingly, the court concludes that the Defendants are entitled to dismissal to the provisions on Rule 12 (b) (6) of the Federal Rules of Civil Procedure.

C. Hallman v. Young, et al., Civil Action No. 1:00cv197-D-A

Appendix 15

In this, the last of Hallman's cases, the parties Plaintiff, Patricia Stanford, Mary Lou Presley, and Charles T. Presley, Jr., seek to have this court dismiss the indictment against Walters and compel the Defendants to prosecute Anthony Gliatta for the capital murders of Reed and Brandon Gliatta. The court will first turn to the issue of the Plaintiff's standing.

1. Plaintiffs Lack of Standing

In the instant case, Charles Walters has been indicted, and is presently being prosecuted by the State of Mississippi for the capital murder of Pamela Reed and Brandon Gliatta. Walters, therefore, has an acute, live controversy with the State and its prosecutor. None of the parties Plaintiff in this cause of action, Mary Hallman, Patricia Stanford, Mary Lou Presley, or Charles T.

Presley, Jr., however, has such a controversy. The Plaintiffs have not been indicted, arrested, or even threatened by the prosecutor.

Indeed, the Plaintiffs' roles in this and other cases appear only to be that they were relatives of the decedents.

Whatever rights Walters, who is being prosecuted under the state criminal statues, may have, Hallman, Stanford, Presley and Presley, Jr., cannot share it with him. If these individuals had alleged that they would be prosecuted for certain conduct relative to the murders of Reed and Brandon Gliatta, then a genuine controversy might be said to exist. But here the Plaintiffs do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible. They

claim the right to bring this suit solely because of their status as family members of the murder victims. The court is of the opinion that this allegation even if true, is insufficient to bring the equitable jurisdiction of the federal courts into play to enjoin a pending state prosecution. A federal lawsuit to stop a prosecution in a state court is a serious matter. Persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs in such cases. See Golden v. Zwickler, 394 U.S. 103, 89 S. Ct. 956,22 L, Ed. 2d 113 (1969).

2. The Anti-Injunction Act and the Younger Abstention Doctrine.

Alternatively, the court concludes that even if the parties Plaintiff could establish standing to

bring the underlying cause of action, the Anti-Injunction Act, 28 U.S.C. § 2283, and the principles espoused in Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971), require dismissal of the Plaintiffs' claims.

The Anti-Injunction Act, 28 U.S.C. § 2283, provides

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Indeed, the Supreme Court has instructed that the Act is an "absolute prohibition against any injunction of any state-court proceedings." Vendo Co. v. Lektro-Vend Corp., 433 U.S. 623, 630, 97 S.

Ct. 2881, 2887, 53 L. Ed. 2d 1009 (1977). Although the statue establishes three narrow exceptions to its terms, the present case does not fall within any of those exceptions. Thus, 28 U.S.C. § 2283 expressly prohibits this court from granting Plaintiffs' request for an injunction of the state court criminal proceedings against Walters.

Furthermore, the principles espoused in the seminal case of Younger v. Harris mandate dismissal of the Plaintiffs' claims. Abstention under the Younger doctrine is generally required when "assumption of jurisdiction by a federal court would interfere with pending state proceeding, whether of a criminal or civil, or even administrative character." Word of Faith World Outreach Center Church, Inc. v. Morales, 986 F.2d 962, 966 (5th Cir), cert. denied, 510 U.S. 823, 114 S.

Ct. 82, 126 L. Ed. 2d 50 (1993). The Younger abstention doctrine is based on notions of comity and federalism, and prohibits federal judicial interference with pending state judicial and state administrative proceedings of a judicial or quasi-judicial nature where important state interests are involved and the plaintiff has or will have an opportunity to present his federal claims in the state preoceedings." Geotes v. Mississippi Bd. Of Veterinary Med., 986 F. Supp. 1028, 1031 (S.D. Miss. 1997); see also Moore v. Sims, 442 U.S. 415, 99 S. Ct. 2371, 60 L. Ed. 2d 994 (1979). To determine whether Younger abstention is appropriate, the Supreme Court has promulgated a three-part inquire: 1) whether the state proceedings constitute an ongoing state judicial proceeding; 2) whether the proceedings implicate

important state interests; and 3) whether there is an adequate opportunity in the state proceeding to raise constitutional challenges. Middlesex County Ethics Comm. V. Garden State Bar Ass'n, 457 U.S. 423, 432, 102 S. Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982). If each inquiry is answered in the affirmative, then the district court must dismiss the federal action and allow the state process to continue.

In the instant case, the first Younger criteria is clearly satisfied. Walters has been the subject of an ongoing investigation by the Lee County Sheriffs' Office since at least August 19, 1998, the date of his arrest. This investigation culminated in an indictment and imminent criminal prosecution with jury selection scheduled to begin on October 9, 2000, and trial set to proceed on October 10,

2000. Indeed, it appears that the immediacy of the trial date prompted the Plaintiffs to seek equitable relief in this court.

> With respect to pending criminal proceedings, it appears well-settled that: Federal injunctions against state criminal statues, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. No citizen or member of the community is immune from prosecution, in good faith, for alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to

the plaintiff who seeks the aid. Younger, 401 U.S. at 46-47, 91 S. Ct. at 751-52 (quoting Beal v.Missouri Pac. R.R. Corp., 312 U.S. 45, 49, 61 S. Ct. 418, 420, 85 L. Ed. 577 (1941).

The second inquiry in determining the propriety of Younger abstention is also met. Indeed, this court can conceive no greater state interest than that of prosecuting offenders under a state's criminal justice system.

Lastly, the court concludes that the Plaintiffs' objections to the State's prosecution of Walters are all challenges, which can be presented to a state court. That is to say, these Plaintiffs, (rather Walters) have "an adequate opportunity in the state proceeding to raise (these) constitutional challenges." Middlesex, 457, U.S. at 432, 102 S. Ct. at 2521. To be sure, the proper operation of the

Younger doctrine hinges upon the availability of an adequate remedy in state court for the violation of federal rights. Ballard v. Wilson, 856 F.2d 1568,1571 (5th Cir. 1988). Regardless of any potential merit that the Plaintiffs' claims may have, this court is confident that these matters can be fully litigated in the pending causes before the courts of the State of Mississippi. "If he loses in the state courts he may petition to the United States Supreme Court to grant certiorari to review his constitutional claims." Ballard, 856, F.2d at 1571. Thus, Younger abstention is appropriate while these proceedings work their way through the state appellate process. Id (citing Hicks v. Mirands, 422 U.S. 332, 350 n. 18, 95 S. Ct. 2281, 2292, 45 L. Ed.2d 223 (1975).

In that there are pending state proceedings

related to the case at hand in which the Plaintiffs may assert their constitutional arguments this court is bound by the decision of Younger v. Harris to abstain from asserting jurisdiction over the Plaintiffs' claims for injunctive relief.

Based on the foregoing principles, the court finds that the Plaintiffs are not the proper parties Plaintiff to this cause of action and consequently, lack standing to pursue the underlying claims. Alternatively, in light of the nature of the requested relief, the court also concludes that the Younger abstention doctrine mandates dismissal of this case.

A separate order in accordance with this opinion shall issue this day.

This the 4th day of October 2000

Appendix 26

-s-

Glen H. Davidson

Chief United States District Judge

Appendix 27

IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF
MISSISSIPPI
EASTERN DIVISION

MARY HALLMAN, Next Friend with
General Power of Attorney for
Charles Clifton Walters **PLAINTIFF**

v. **Civil Action No. 1:00cv186-D-A**

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v. **Civil Action No. 1:00cv193-D-A**

HAROLD RAY PRESLEY,
SHERIFF OF LEE COUNTY, et al **DEFENDANTS**

MARY HALLMAN, PATRICIA STANFORD,
MARY LOU PRESLEY, and
CHARLES T. PRESLEY, Jr. **PLAINTIFFS**

v. **Civil Action No. 1:00cv197-D-A**

JOHN YOUNG, et al **DEFENDANTS**

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TO BE FILED IN ALL CASES

ORDER DENYING PETITION FOR RECONSIDERATION

Before the court is the Plaintiff Mary Hallman's Petition to Reconsider and Set Aside Order. The Plaintiff's instant motion raises no new issues or arguments for the court to consider. The court fully considered Plaintiff's arguments and concluded as a matter of law that the above-styled consolidated cases should be dismissed.

It appears to the court that the Plaintiff's motion for reconsideration should be denied for lack of good cause shown. For the reasons stated in the prior Opinion and Order dismissing the underlying cases, the Plaintiff's motion to reconsider is DENIED.

SO ORDERED, this the 19th day of October 2000.

-s-

Glen H. Davidson

Chief United States District Judge

Appendix 30

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-60802
Summary Calendar

MARY HALLMAN, Next Friend with General Power of Attorney for Charles Clifton Walters

Plaintiff-Appellant,

versus

HAROLD RAY PRESLEY, Sheriff of Lee County, Individually and in His Official Capacity; TOM BILLUPS, DR., Physician, Individually and in His Official Capacity; TERRY JONES, Lee County Investigator, Individually and in His Official Capacity; STEVE STANFORD, Lee County Investigator, Individually and in His Official Capacity; JOHN HALL, Lee County Investigator, Individually and in His Official Capacity; JIM JOHNSON, Lee County Investigator, Individually and in His Official Capacity; MICHAEL BERTHAY, Criminal Investigator, Individually and in His Official Capacity; JOHN YOUNG, District Attorney, Individually and in His Official Capacity; DENNIS FARRIS, Assistant District Attorney, Individually and in His Official Capacity; SAM REEDY, Assistant District Attorney, Individually and in His Official

Capacity; ROLAND GETTY, Assistant District Attorney, Individually and in His Official Capacity; JERRY CROCKER, Investigator, Individually and in His Official Capacity; THOMAS GARDNER, Circuit Judge, Individually and in His Official Capacity,

Defendants-Appellees,

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consolidated with

MARY HALLMAN, Family Member of Pamela Reed and Baby Brandon; PATRICIA STANFORD, Family Member of Pamela Reed and Baby Brandon; MARY LOU PRESLEY, Family Member of Pamela Reed and Baby Brandon; CHARLES T. PRESLEY, Jr., Family Member of Pamela Reed and Baby Brandon,

Plaintiffs-Appellants

versus

HAROLD RAY PRESLEY, Sheriff of Lee County, Individually and in His Official Capacity; TERRY JONES, Lee County Investigator, Individually and in His Official Capacity; STEVE STANFORD, Lee County Investigator , Individually and in His Official Capacity; JIM JOHNSON, Lee County Investigator, Individually and in His Official Capacity; MICHAEL BERTHAY, Investigator with Mississippi Highway Patrol, Individually and in His Official Capacity; JIMMY BOXX, Colonel, Mississippi Highway Patrol, Individually and in

His Official Capacity; WAYNE MILLER, Captain, Mississippi Highway Patrol, Individually and in His Official Capacity; JOHN YOUNG, District Attorney, Individually and in His Official

Capacity; DENNIS FARRIS, Assistant District Attorney, Individually and in His Official Capacity; SAM REEDY, Assistant District Attorney, Individually and in His Official Capacity; ROLAND GETTY, Assistant District Attorney, Individually and in His Official Capacity; THOMAS GARDNER, Circuit Judge, Individually and in His Official Capacity; MIKE MOORE, Attorney General, Individually and in His Official Capacity; BUCK BUCHANAN, United States Attorney, Individually and in His Official Capacity; CAROLYN CLAYTON, Executive Director Survival, Individually and in Her Official Capacity; MARILYN HERRING, Victims Rights Coordinator, Individually and in Her Official Capacity; MICHAEL P. MILLS, Supreme Court Justice, Individually and in His Official Capacity; TERRY SMITH, WTVA News Director, Individually and in His Official Capacity; LLOYD GRAY, Daily Journal Editor, Individually and in His Official Capacity; JIM CLARK, Publisher Courier, Individually and in His Official Capacity; MARTHA KING, Individually; LARRY (RANDY) JONES, Individually,

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Defendants-Appellees,

UNITED STATES OF AMERICA

Movant-Appellee,

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consolidated with

MARY HALLMAN, Family Member of Pamela Reed and Baby Brandon; PATRICIA STANFORD, Family Member of Pamela Reed and Baby Brandon; MARY LOU PRESLEY, Family Member of Pamela Reed and Baby Brandon; CHARLES T. PRESLEY, Jr., Family Member of Pamela Reed and Baby Brandon,

versus

JOUN YOUNG, District Attorney; DENNIS FARRIS, Assistant District Attorney; SAM REEDY, Assistant District Attorney; ROLAND GETTY, Assistant District Attorney; THOMAS GARDNER, Circuit Judge; HAROLD RAY PRESLEY, Sheriff; TERRY JONES, Lee County Investigator; STEVE STANFORD, Lee County Investigator; JIM JOHNSON, Lee County Investigator; MICHAEL BERTHAY, Criminal Investigator,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:00-CV-186-D-A
USDC No. 1:00-CV-197-D-A
USDC No. 1:00-CV-193-D-A

Before EMILIO M. GARZA, STEWART AND PARKER, Circuit Judges:

PER CURIAM:

Mary Hallman appeals the district court's dismissal of these three separate civil actions filed against numerous defendants challenging their actions taken in connection with the investigation and prosecution of Charles Clifton Walters for the murders of Pamela Reed and her infant son, Brandon Gliatta. Hallman, a relative of the decedents, alleged that the defendants conspired to violate Walters' constitutional rights, including his right to adequate medical care, and that the

defendants unlawfully released and decided not to prosecute the actual perpetrator of the murders, Anthony Gliatta. The district court dismissed her actions for lack of standing and for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12 (b) (6).

Because Hallman has not shown that she has suffered an injury in fact or the possibility of future harm that is "certainly impending," she has not shown that the district court erred in dismissing her actions for lack of standing. See Okpalobi v. Foster, 244 .3d 405, 425 (5th Cir. 2001); Trinity Indus. Inc. v. Martin, 963 F.2d 795, 799 (5th Cir. 1992).

Pursuant to 5th Cir. R. 47. 5, the court has determined that this opinion should not be published and is not precedent except under the

limited circumstances set forth in 5th Cir. R. 47.5.4.

Because Hallman's allegations are conclusional and do not establish the elements of a due process or equal protection violation, or that the defendants acted in concert to obstruct justice, unlawfully refused to prosecute Gliatta for the murders, or acted with invidious race or class-based discriminatory intent, Hallman has not shown that the district court erred in dismissing her actions for failure to state a claim upon which relief may be granted and for lack of standing. See Bradley v. Puckett, 157 F.3d 1022, 1025 (5th Cir. 1998). Further, Hallman has not shown that the district court erred in holding that the court was prohibited from interfering with the ongoing

state criminal prosecution of Walters by the Anti-Injunction Act, 28 U.S.C. § 2283, and Younger v. Harris, 401 U.S. 37, 53 (1971).

Hallman argues that the district court erred in staying discovery. Because the order staying discovery was within the district court's discretion and because the defendants had filed motions to dismiss based on immunity defenses which were pending before the court, district court did not abuse its discretion in staying discovery pending a ruling of the defendants' motions to dismiss. See Richardson v. Henry, 902 F.2d 414, 417 (5th Cir. 1990).

Hallman argues that the district court erred in consolidating the three separate civil actions. Because Hallman's actions involved primarily the same parties, the same underlying facts, and

primarily the same claims, the district court did not abuse its discretion in consolidating the cases.

See Fed. R. Civ. P. 42(a); Bottazzi v. Petroleum Helicopters, Inc. 664 F.2d 49, 50 (5 Cir. 1981).

Hallman has filed a motion to supplement the appellate record with the state court judgment showing that Walters was found not guilty of the murders of Pamela Reed and Gliatta. She also states that Walters was admitted to a hospital for severe blockage in his heart shortly after he was released from custody. This court generally will not enlarge the record on appeal to include evidence that was not before the district court. See Trinity Indus., 963, F.2d at 799. Because Hallman did not present this evidence in the district court

and because she has not shown that this information is necessary to the disposition of her appeal, her "Motion to Suspend the Rules Pursuant to Fed. R. App. P. 2 and to Supplement the Record" is denied. See Harvey v. Andrist, 754, F.2d 569, 571, n.1 (5th Cir. 1985).

This appeal is frivolous; it is dismissed. 5th Cir. R. 42. 2. DISMISSED; "MOTION TO SUSPEND RULES PURSUANT TO FED. R. APP. P. 2 AND TO SUPPLEMENT THE RECORD" DENIED.

Appendix 40

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 00-60802

MARY HALLMAN, Next Friend with General Power of Attorney for Charles Clifton Walters

Plaintiff-Appellant

v.

HAROLD RAY PRESLEY, Sheriff of Lee County, Individually and in His Official Capacity; TOM BILLUPS, DR., Physician, Individually and in His Official Capacity; TERRY JONES, Lee County Investigator, Individually and in His Official Capacity; STEVE STANFORD, Lee County Investigator, Individually and in His Official Capacity; JOHN HALL, Lee County Investigator, Individually and in His Official Capacity; JIM JOHNSON, Lee County Investigator, Individually and in His Official Capacity; MICHAEL BERTHAY, Criminal Investigator, Individually and in His Official Capacity; JOHN YOUNG, District Attorney, Individually and in His Official Capacity; DENNIS FARRIS, Assistant District Attorney, Individually and in His Official Capacity; SAM REEDY, Assistant District Attorney, Individually and in His Official

Capacity; ROLAND GETTY, Assistant District Attorney, Individually and in His Official Capacity; JERRY CROCKER, Investigator, Individually and in His Official Capacity; THOMAS GARDNER, Circuit Judge, Individually and in His Official Capacity,

Defendants-Appellees

MARY HALLMAN, Family Member of Pamela Reed and Baby Brandon; PATRICIA STANFORD, Family Member of Pamela Reed and Baby Brandon; MARY LOU PRESLEY, Family Member of Pamela Reed and Baby Brandon; CHARLES T. PRESLEY, Jr., Family Member of Pamela Reed and Baby Brandon,

Plaintiffs-Appellants

v.

HAROLD RAY PRESLEY, Sheriff of Lee County, Individually and in His Official Capacity; TERRY JONES, Lee County Investigator, Individually and in His Official Capacity; STEVE STANFORD, Lee County Investigator , Individually and in His Official Capacity; JIM JOHNSON, Lee County Investigator, Individually and in His Official Capacity; MICHAEL BERTHAY, Investigator with Mississippi Highway Patrol, Individually and in His Official Capacity; JIMMY BOXX, Colonel, Mississippi Highway Patrol, Individually and in

His Official Capacity; WAYNE MILLER, Captain, Mississippi Highway Patrol, Individually and in His Official Capacity; JOHN YOUNG, District Attorney, Individually and in His Official Capacity; DENNIS FARRIS, Assistant District Attorney, Individually and in His Official Capacity; SAM REEDY, Assistant District Attorney, Individually and in His Official Capacity; ROLAND GETTY, Assistant District Attorney, Individually and in His Official Capacity; THOMAS GARDNER, Circuit Judge, Individually and in His Official Capacity; MIKE MOORE, Attorney General, Individually and in His Official Capacity; BUCK BUCHANAN, United States Attorney, Individually and in His Official Capacity; CAROLYN CLAYTON, Executive Director Survival, Individually and in Her Official Capacity; MARILYN HERRING, Victims Rights Coordinator, Individually and in Her Official Capacity; MICHAEL P. MILLS, Supreme Court Justice, Individually and in His Official Capacity; TERRY SMITH, WTVA News Director, Individually and in His Official Capacity; LLOYD GRAY, Daily Journal Editor, Individually and in His Official Capacity; JIM CLARK, Publisher Courier, Individually and in His Official Capacity; MARTHA KING, Individually; LARRY (RANDY) JONES, Individually,

Defendants-Appellees

UNITED STATES OF AMERICA

Movant-Appellee

MARY HALLMAN, Family Member of Pamela Reed and Baby Brandon; PATRICIA STANFORD, Family Member of Pamela Reed and Baby Brandon; MARY LOU PRESLEY, Family Member of Pamela Reed and Baby Brandon; CHARLES T. PRESLEY, Jr., Family Member of Pamela Reed and Baby Brandon,

Plaintiff - Appellants

v.

JOUN YOUNG, District Attorney; DENNIS FARRIS, Assistant District Attorney; SAM REEDY, Assistant District Attorney; ROLAND GETTY, Assistant District Attorney; THOMAS GARDNER, Circuit Judge; HAROLD RAY PRESLEY, Sheriff; TERRY JONES, Lee County Investigator; STEVE STANFORD, Lee County Investigator; JIM JOHNSON, Lee County Investigator; MICHAEL BERTHAY, Criminal Investigator,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Mississippi, Aberdeen

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ON PETITION FOR REHEARING

Before EMILIO M. GARZA, STEWART, and PARKER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied.

ENTERED FOR THE COURT:

-s-

Emilio M. Garza

United States Circuit Judge